

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. 5:01-cv-03233HL
v.)	
)	
GC QUALITY LUBRICANTS, INC.,)	
GEORGIA-CAROLINA OIL COMPANY,)	
BAY STREET CORPORATION,)	
and JOHN PAUL JONES, JR.)	
(an individual),)	
)	
Defendants.)	
)	

CONSENT DECREE

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	JURISDICTION AND VENUE	3
III.	APPLICABILITY	3
IV.	DEFINITIONS	4
V.	SETTLEMENT AMOUNTS	6
VI.	COMPLIANCE REQUIREMENTS	9
VII.	STIPULATED PENALTIES	10
VIII.	FORCE MAJEURE	12
IX.	DISPUTE RESOLUTION	14
X.	INFORMATION COLLECTION	15
XI.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS	16
XII.	COSTS	17
XIII.	NOTICES	18
XIV.	EFFECTIVE DATE	19
XV.	RETENTION OF JURISDICTION	19
XVI.	MODIFICATION	19
XVII.	TERMINATION	19
XVIII.	BANKRUPTCY COORDINATION	20
XIX.	PUBLIC PARTICIPATION/DISTRICT COURT APPROVAL	20
XX.	SIGNATORIES/SERVICE	21
XXI.	INTEGRATION/APPENDICES	22

XXII. FINAL JUDGMENT	22
XXIII. APPENDICES	23

I. BACKGROUND

A. Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA") and the United States Coast Guard ("Coast Guard"), filed a Complaint in this action on August 14, 2001, alleging that Defendants GC Quality Lubricants, Inc. ("GC"), Georgia-Carolina Oil Company ("Georgia-Carolina"), Bay Street Corporation ("Bay Street"), and John Paul Jones, Jr. ("Jones"), violated Section 311(b) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b), by discharging oil into navigable water, and violated oil pollution prevention regulations promulgated pursuant to Section 311(j)(1)(C) of the Clean Water Act, 33 U.S.C. § 1321(j)(1)(C), and found at 40 Code of Federal Regulations ("C.F.R.") Part 112. This action seeks injunctive relief to require Defendants' ongoing operations to comply with the CWA oil pollution prevention regulations, and the assessment of penalties under CWA Section 311, 33 U.S.C. § 1321. The Complaint also seeks, pursuant to the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. §§ 2701, *et seq.*, on behalf of the Oil Spill Liability Trust Fund (the "Fund"), the recovery of the United States' removal costs, plus interest as provided under 33 U.S.C. § 2705, and related attorneys' fees, for the cleanup arising out of the discharge and substantial threat of discharge of oil from Defendants' facility in Macon, Georgia ("Facility") into the navigable waters of the United States. The Fund is administered by the Coast Guard National Pollution Funds Center.

B. This Court found in response to the United States' motion for summary judgment that Defendants are liable for the CWA claims and for the OPA cost recovery claim. With respect to the CWA claims, this Court found that Defendants discharged oil to navigable waters and failed to have an adequate Spill Prevention Control and Countermeasures ("SPCC") Plan in

place. Order of June 4, 2003, published at *United States v. Jones*, 267 F. Supp.2d 1349 (M.D. Ga. 2003).

C. In November 2001, GC filed for bankruptcy under chapter 11 of the Bankruptcy Code, seeking reorganization. *In re GC Quality Lubricants, Inc.* No. 01-54952 RFH (Bankr. M.D. Ga.) (filed Nov. 1, 2001). The United States, on behalf of the EPA and the Coast Guard, filed a timely Proof of Claim against GC in February 2002 asserting a general unsecured claim for removal costs under OPA of at least \$2,584,562.25, plus interest, and for CWA civil penalties of up to \$27,500 per violation per day.

D. In November 2001, Jones filed for bankruptcy under chapter 7 of the Bankruptcy Code. *In re John Paul Jones, Jr.*, No. 01-55087-RFH (Bankr. M.D. Ga.) (filed Nov. 9, 2001). The United States filed a timely Proof of Claim against Jones in February 2004 asserting a general unsecured claim for removal costs in the amount of \$2,584,562.25, plus interest due under OPA section 1005, 33 U.S.C. § 2705. Interest calculated as of April 30, 2004 under 33 U.S.C. § 2705, is \$464,323. As asserted in both Proofs of Claim, the liability for the cost recovery claim is joint and several with other liable parties, namely among Defendants.

E. In February 2002, the United States filed an adversary proceeding related to Jones' Bankruptcy Case seeking a ruling that Jones' obligations for CWA penalties are nondischargeable in bankruptcy. *United States v. John Paul Jones*, Adversary Proceeding No. 02-5025 (Bankr. M.D. Ga.). In response to the United States' motion for summary judgment in the adversary proceeding, the Bankruptcy Court found that Jones' CWA debt is nondischargeable in bankruptcy under Section 523(a)(7) of the Bankruptcy Code. Memorandum Opinion dated April 23, 2004, *In re John Paul Jones, Jr.*, Case No. 01-55087 RFH, Adversary

Proceeding No. 02-5025 (Bankr. M.D. Ga.).

F. The United States has reviewed the financial information submitted by Defendants in consideration of their financial ability to make settlement payments, and has relied upon this Financial Information in negotiating the settlement proposed herein. The United States has also relied upon that information to determine that Georgia-Carolina, a wholly owned and non-operating subsidiary of Bay Street, administratively dissolved in or about 1999, and has virtually no assets, and that Bay Street, which is a holding company for GC, has virtually no other assets separate from GC.

G. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties, IT IS HEREBY
ADJUDGED, ORDERED, AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and 33 U.S.C. § 2717(b), and over the Parties. Venue lies in this District pursuant to 28 U.S.C. § 1391(b) and (c) and 1395(a), and 33 U.S.C. § 2717(b). For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree or such action and over Defendants, and consent to venue in this judicial district.

III. APPLICABILITY

2. The obligations of this Consent Decree apply to and are binding upon the

United States, and upon Defendants and any successor or other entities that operate the Facility.

3. Defendants shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Decree. Defendants shall condition any such contract upon performance of the work in conformity with the terms of this Decree.

4. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of their officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Decree.

IV. DEFINITIONS

5. Terms used in this Consent Decree that are defined in the CWA, OPA, or in regulations promulgated pursuant to the CWA or OPA shall have the meanings assigned to them in those Acts or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Bankruptcy Court" shall mean the United States Bankruptcy Court for the Middle District of Georgia;
- b. "Coast Guard" shall mean the United States Coast Guard and any successor entities;
- c. "Complaint" shall mean the complaint filed by the United States in this action;
- d. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXIII);

e. "CWA" shall mean the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*;

f. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;

g. "Defendants" shall mean GC Quality Lubricants, Inc., Georgia-Carolina Oil Company, Bay Street Corporation, and John Paul Jones, Jr.;

h. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;

i. "Facility" shall mean Defendants' petroleum-based lubricants facility at 1403 and 1414 Sixth Street, Macon, Georgia;

j. "GC Bankruptcy Case" shall mean the bankruptcy matter of GC Quality Lubricants, Inc., which is being administered in *In re GC Quality Lubricants, Inc.*, Case number 01-54952 RFH (Bankr. M.D. Ga.)

k. "Jones Bankruptcy Case" shall mean the bankruptcy matter of John Paul Jones, Jr. which is being administered in *In re John Paul Jones, Jr.*, Case number 01-55087 RFH (Bankr. M.D. Ga.).

l. "OPA" shall mean the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 *et seq.*;

m. "Operating Defendants" shall mean GC and Jones;

n. "Paragraph" shall mean a portion of this Decree identified by an

Arabic numeral;

- o. "Parties" shall mean the United States and Defendants;
- p. "Section" shall mean a portion of this Decree identified by a

Roman numeral;

- q. "State" shall mean the state of Georgia;
- r. "United States" shall mean the United States of America, acting on

behalf of EPA and the Coast Guard.

V. SETTLEMENT AMOUNTS

6. Jones' Penalty.

a. Jones shall pay in settlement for CWA civil penalties the principal sum of seventy-five thousand dollars (\$75,000), plus an additional sum for interest at the rate specified in 28 U.S.C. § 1961 as explained below. Payment of the principal shall be made in monthly installments of \$1,250 for five years. The first payment shall be due within 30 days of the Effective Date of this Consent Decree. Subsequent payments shall be due on the same date of each month thereafter until all payments have been made. Each installment, except for the first, on which no interest shall be due, shall include the principal amount due plus an additional sum for accrued interest on the declining principal balance calculated from the Effective Date of the Consent Decree. Jones may accelerate these payments, and interest due on the accelerated payments shall be reduced accordingly. Payments shall specify that they are made toward CWA civil penalties to be deposited into the Oil Spill Liability Trust Fund pursuant to 33 U.S.C. § 1321(s), § 4304 of Pub. L. No. 101-380, and 26 U.S.C. § 9509(b)(8).

- b. Jones' penalty debt is nondischargeable in bankruptcy, and will

be paid solely from his post-petition assets.

c. If Jones fails to make an installment payment due under subparagraph a. by the 60th Day after the date payment was due, the remaining installment payments and all accrued interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

7. Claim Against Jones for Cost Recovery. In settlement, compromise and satisfaction of the United States' OPA claim asserted in its Proof of Claim in the Jones Bankruptcy Case, Jones consents to the allowance in the Jones Bankruptcy Case of a three million dollar (\$3,000,000) general unsecured claim for the United States for the cost recovery claim, which shall be treated in the same manner as other general unsecured claims and shall not be subordinated to such claims. If the United States receives any distribution from the GC Bankruptcy case on this cost recovery claim pursuant to the subsequent Paragraph below, then this cost recovery claim in Jones' Bankruptcy Case shall be reduced by the amount of that distribution.

8. Claim Against GC for Cost Recovery. In settlement, compromise and satisfaction of the United States' OPA claim asserted in its Proof of Claim in the GC Bankruptcy Case, GC consents to the allowance of a three million dollar (\$3,000,000) general unsecured claim for the United States' cost recovery claim, which shall be treated in the same manner as other general unsecured claims and shall not be subordinated to similar claims. If the United States receives any distribution from the Jones Bankruptcy Case on this cost recovery claim pursuant to the preceding Paragraph, then the cost recovery claim in the GC Bankruptcy Case shall be reduced by the amount of that distribution.

9. Claim Against GC for Penalty. In settlement, compromise and satisfaction of the United States' CWA penalty claim asserted in its Proof of Claim in the GC Bankruptcy Case, GC consents to the allowance in the GC Bankruptcy Case of a three hundred and twenty-five thousand dollar (\$325,000) general unsecured claim for the United States for the civil penalty claim, which shall be treated in the same manner as other general unsecured claims and shall not be subordinated to such claims in chapter 11 reorganization.

10. All payments and distributions under this Section shall be made to the United States through the office of the United States Attorney, Financial Litigation Unit, Middle District of Georgia, 433 Cherry Street, Macon, Georgia 31201, and shall reference this Civil Action Number 5:01-cv-03233HL, DOJ Number 90-5-1-1-07033, and U.S. Coast Guard reference number FPN 077054, and shall specify that such monies are to be deposited in the Oil Spill Liability Trust Fund. Distributions under this Section in the GC Bankruptcy Case shall be made in accordance with the Debtor's Plan of Reorganization approved by the Bankruptcy Court.

11. At the time of each payment or distribution made under this Section, Defendants shall simultaneously send written notice of payment and a copy of any transmittal documentation to the United States in accordance with Section XIII of this Decree (Notices) and to:

LT Carolyn Leonard-Cho
United States Coast Guard
National Pollution Funds Center
4200 Wilson Boulevard, Suite 1000
Arlington, Virginia 22203-1804

CDR Brian Judge
United States Coast Guard
Office of Claims and Litigation
2100 Second Street, S.W.
Washington, D.C. 20593-0001

12. Upon the Effective Date of this Decree, the United States will be deemed to have

limited its CWA penalty claim against GC asserted in its Proof of Claim to a fixed amount of \$325,000. Upon the Effective Date of this Agreement, the United States will be deemed to have limited its OPA cost recovery claim asserted in its Proof of Claim against GC to \$3,000,000, which GC is jointly and severally liable for, along with Jones.

13. Upon the Effective Date of this Decree, the United States will be deemed to have limited its OPA cost recovery claim asserted in its Proof of Claim against Jones to \$3,000,000, which Jones is jointly and severally liable for, along with GC.

VI. COMPLIANCE REQUIREMENTS

14. Within 75 days of the Effective Date of this Decree, Operating Defendants shall comply with respect to the Facility with each compliance obligation listed in Appendix A, and otherwise comply with oil pollution prevention regulations in 40 C.F.R. Part 112, as amended, with respect to the Facility, including the implementation of a certified SPCC plan.

15. Within 120 days after the Effective Date of the Decree, Operating Defendants shall submit to the United States in accordance with Section XIII of this Decree (Notices) a report ("Compliance Report") regarding the actions taken to meet and satisfy compliance obligations listed in Appendix A. The Compliance Report shall be signed by an officer of GC and include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete.

VII. STIPULATED PENALTIES

16. If Jones fails to pay the civil penalty required under Paragraph 6 when due, Jones shall pay a Stipulated Penalty of \$100 per day for each day that the payment is late. Late payment of the civil penalty shall be made in accordance with Section V, Paragraphs 10 and 11. Stipulated Penalties shall be paid in accordance with Paragraph 22. All transmittal correspondence shall state whether the payment is for late payment of the civil penalty, or for Stipulated Penalties for late payment.

17. Operating Defendants shall be liable for Stipulated Penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

18. Compliance Milestones

a. Stipulated Penalties of \$100 shall accrue per violation per day for each violation of the requirements identified in Subparagraph b.:

b. Each compliance obligation listed in Appendix A is required to be met within 75 days of the Effective Date of this Consent Decree. The Compliance Report is required to be provided to the United States within 120 days of the Effective Date of this Consent Decree.

19. Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases as determined by the United States. Stipulated Penalties shall accrue simultaneously for separate

violations of this Consent Decree. Operating Defendants shall pay any Stipulated Penalty within 30 days of receiving the United States' written demand. For purposes of the GC Bankruptcy Case, Stipulated Penalties against GC for days of violation prior to the Effective Date of a Plan of Reorganization shall be allowed administrative expenses and GC shall pay all penalties assessed pursuant to this Decree as they become due in accordance with the terms set forth in this Decree.

20. The United States may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due it under this Consent Decree.

21. Stipulated Penalties shall continue to accrue as provided in Paragraph 19, above, during any Dispute Resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Operating Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 days of the effective date of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Operating Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 days of receiving the Court's decision or order, except as provided in Subparagraph c., below;

c. If any Party appeals the District Court's decision, Operating Defendants shall pay all accrued penalties determined to be owing, together with interest, within

15 days of receiving the final appellate court decision.

22. Operating Defendants shall, as directed by the United States, pay Stipulated Penalties owing to the United States by certified or cashier's check in the amount due payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-1-1-07033 and United States Attorney's Office file number 2000V00571, and delivered to the office of the United States Attorney, Middle District of Georgia, 433 Cherry Street, Macon, Georgia 31201.

23. Defendants shall not deduct Stipulated Penalties paid under this Section in calculating their federal income tax.

24. If Operating Defendants fail to pay Stipulated Penalties according to the terms of this Consent Decree, Operating Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due.

25. Subject to the provisions of Section XI of this Consent Decree (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendants' violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of relevant CWA statutory or SPCC regulatory requirements, Operating Defendants shall be allowed a credit, for any Stipulated Penalties paid, against any statutory penalties imposed for such violation.

VIII. FORCE MAJEURE

26. A "force majeure event" is any event beyond the control of Defendants, their contractors, or any entity controlled by Defendants that delays the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation.

"Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

27. Defendants shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than seven days after the time Defendants first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Defendants shall also provide written notice, as provided in Section XIII of this Consent Decree (Notices), within seven days of the time Defendants first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Defendants' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendants' rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Defendants from asserting any claim of force majeure.

28. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for Defendants to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XVI of this Consent Decree (Modification).

29. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Defendants, the United States'

position shall be binding, unless Defendants invoke Dispute Resolution under Section IX of this Consent Decree. In any such dispute, Defendants bear the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that Defendants gave the notice required by Paragraph 27; that the force majeure event caused any delay Defendants claim was attributable to that event; and that Defendants exercised best efforts to prevent or minimize any delay caused by the event.

IX. DISPUTE RESOLUTION

30. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, such procedures shall not apply to actions by the United States to enforce obligations of the Defendants that have not been disputed in accordance with this Section.

31. Any dispute subject to dispute resolution under this Consent Decree shall be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 21 days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, Defendants file with the Court a motion for judicial review of the dispute in accordance with the following Paragraph.

32. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII of this Settlement

Agreement (Notices), a motion requesting judicial resolution of the dispute. The motion shall contain a written statement of Debtor's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

33. The United States shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

34. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 21, above. If Defendants do not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION

35. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry to the Facility, at all reasonable times, upon presentation of credentials to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in

accordance with the terms of this Consent Decree;

c. assess Defendants' compliance with this Consent Decree.

36. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

37. This Consent Decree settles and resolves all CWA and OPA civil claims of the United States including cost recovery and penalties asserted in the Complaint or otherwise available under CWA or OPA (with the exception of any claim for natural resource damages) in connection with the response actions arising out of events alleged in the Complaint filed in this action, through the date of lodging of this Consent Decree.

38. This Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the CWA or OPA or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified herein.

39. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance

with provisions of the CWA.

40. This Consent Decree does not limit or affect the rights of Defendants or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

41. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

42. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Facility, whether related to the violations addressed in this Consent Decree or otherwise.

43. Defendants hereby covenant not to sue and agree not to assert any claim directly or indirectly for reimbursement from the Oil Spill Liability Trust Fund or the Superfund in connection with the discharges and/or substantial threat of discharges asserted in the Complaint; or against the United States for cost recovery or contribution in connection with the discharges and/or substantial threat of discharges asserted in the Complaint including under section 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* ("CERCLA"), or for response activities at the Facility.

XII. COSTS

44. The Parties shall bear their own costs of this action, including attorneys' fees, except that if Jones defaults on payment of the penalty or the Operating Defendants do not

comply with the Compliance Obligations at Section VI, the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any Stipulated Penalties due but not paid by Defendants.

XIII. NOTICES

45. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Re: DOJ No. 90-5-1-1-07033
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611

Section Chief
South Enforcement and Compliance Section
RCRA Compliance and Enforcement Branch
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-3104

To Defendants:

John Paul Jones, Jr.
c/o GC Quality Lubricants, Inc.
1403 Sixth Street
Macon, Georgia 31206

46. Any Party may, by written notice to the other Party, change its designated notice recipient or notice address provided above.

47. Notices submitted pursuant to this Section shall be deemed submitted

upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

48. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XV. RETENTION OF JURISDICTION

49. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

50. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court. The terms and schedules contained in Appendix A of this Decree may be modified upon written agreement of the Parties without Court approval, unless any such modification effects a material change to the terms of this Consent Decree or materially affects the Defendants' ability to meet the requirements or objectives of this Decree.

XVII. TERMINATION

51. After Defendants have complied with the compliance obligations of this Consent Decree Section VI (Compliance Requirements), and have made all payments for settlement amounts as required under Section V and any accrued Stipulated Penalties as required

by this Consent Decree, Defendants may serve upon the United States a Request for Termination, stating that Defendants have satisfied those requirements, together with all necessary supporting documentation.

52. Following receipt by the United States of Defendants' Request for Termination, or upon a determination by the United States that termination is appropriate, the Parties shall confer informally as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the Parties agree that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

53. If the United States does not agree that the Decree may be terminated, Defendants may invoke Dispute Resolution under Section IX of this Decree.

XVIII. BANKRUPTCY COORDINATION

54. This Consent Decree shall be subject to Bankruptcy Court approval pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure. Once the Parties have signed the Consent Decree, Debtors GC and Jones agree to seek, in good faith, approval for the compromise embodied in this Consent Decree by the Bankruptcy Court in their respective Bankruptcy Cases within 10 days after it has been fully executed and to use their best efforts to obtain prompt Bankruptcy Court approval of this Consent Decree pursuant to Federal Rule of Bankruptcy Procedure 9019.

XIX. PUBLIC PARTICIPATION/DISTRICT COURT APPROVAL

55. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The

United States reserves the right to withdraw or withhold its consent to the Consent Decree if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice.

56. Notice of this proposed Consent Decree will be published in the Federal Register in a notice substantially in the same form as Appendix B.

57. After approval by the Bankruptcy Court pursuant to the preceding Section of this Consent Decree, and after completion of the public comment period as provided in this Section of this Decree, and if the United States continues to consent to this Consent Decree having considered any public comments, the United States will move the District Court for entry of this Consent Decree as a final order.

58. If this Settlement Agreement is not approved by the Bankruptcy Court and this District Court, this Consent Decree shall be of no force and effect, whereupon nothing herein shall be deemed an admission of any fact or waiver of any right of any Party with respect to the matters contained herein.

XX. SIGNATORIES/SERVICE

59. Each undersigned representative of Defendants, EPA, Coast Guard and the Deputy Section Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

60. This Consent Decree may be signed in counterparts, and its validity shall

not be challenged on that basis.

61. Defendants agree not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

62. Defendants agree to accept service of process by certified mail, return receipt requested, with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION/APPENDICES

63. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which is attached to and incorporated in this Decree no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. FINAL JUDGMENT

64. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXIII. APPENDICES

65. The following appendices are attached to and incorporated into this

Consent Decree:

"Appendix A" is the List of Compliance Requirements;

"Appendix B" is the draft Federal Register notice.

Dated and entered this ___ day of _____, 2004.

**HUGH LAWSON, JUDGE
United States District Court
Middle District of Georgia**

Consent Decree in *United States v. GC Quality Lubricants, Inc., et al.* Civ No. 5:01-cv-03233HL
FOR PLAINTIFF UNITED STATES OF AMERICA:

Respectfully submitted,

DATE: 5/20/04

W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

DATE: May 20, 2004

VALERIE K. MANN
Trial Attorney
William A. Weinischke
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044
Phone: 202/616-8756
Fax: 202/514-2583

Maxwell Woods
United States Attorney
~~Middle District of Georgia~~ 11

DATE: May 24, 2004

BERNARD SNELL
Assistant United States Attorney
U.S. Attorney's Office
Middle District of Georgia
P.O. Box 1702
Macon, Georgia 31202
Phone: 478/621-2732
Ga. Bar No. 665692

Consent Decree in *United States v. GC Quality Lubricants, Inc., et al.* Civ No. 5:01-cv-03233HL
FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

DATE: 5/20/04

J. I. PALMER, JR.
Regional Administrator
U.S. Environmental Protection Agency, Region 4
Atlanta, Georgia

DATE: 5/20/04

JOAN REDLEAF DURBIN
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
Ga. Bar No. 597250

Consent Decree in *United States v. GC Quality Lubricants, Inc., et al.* Civ No. 5:01-cv-03233HL
FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

DATE: 5/20/04

THOMAS V. SKINNER
Acting Assistant Administrator for
Office for Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Washington, D.C.

DATE: 5/20/04

THOMAS J. CHARLTON
Attorney Advisor
Office of Enforcement And Compliance Assurance
U.S. Environmental Protection Agency
Mail Code 2243A
1200 Pennsylvania Ave., NW
Washington, DC 20460

DATE: 5/20/04

R. BRUCE
Acting Chief, Office of Claims and Litigation
U. S. Coast Guard
2100 Second Street, S.W.
Washington, D.C. 20593-0001

DATE: 5/20/04

D.A. CAPIZZI
Chief, Legal Division
U. S. Coast Guard
National Pollution Funds Center
4200 Wilson Blvd., Suite 1000
Arlington, Virginia 22203

Consent Decree in *United States v. GC Quality Lubricants, Inc., et al.* Civ No. 5:01-cv-03233HL

**FOR DEFENDANTS GC Quality Lubricants, Inc., Georgia-Carolina Oil Company,
Bay Street Corporation, and John Paul Jones, Jr. :**

DATE: 5-20-04

L/ ROBERT LOVETT
Georgia State Bar No. 459566
Matthew Myers
Lovett, Cowart and Ayerbe
3608 Vineville Ave.
P.O. Box 185
Macon, Georgia 31202-0185
Phone: 478/476-4500
Fax: 478/476-9090

INDIVIDUALLY AND IN HIS CAPACITY AS CORPORATE OFFICER:

DATE: 05-20-04

JOHN PAUL JONES, JR.
President of GC
Registered CEO of Bay Street
Registered CEO of Georgia-Carolina

Appendix A--Compliance Requirements

The Spill Prevention Control and Countermeasures (SPCC) plan must describe and diagram areas where drums are stored, pursuant to 40 C.F.R. § 112.7(a)(3). The SPCC plan should identify where large numbers of empty drums are staged and describe that all drums in these areas are empty or “permanently closed”.

Pursuant to 40 C.F.R. § 112.7(e), written procedures must be developed for conducting inspections and tests required by 40 C.F.R. Part 112. Written records of inspections and tests must be maintained for at least three years. This includes records of integrity testing as well as, for example, records of containment system inspections, fail-safe engineering device tests, visual inspections of piping, valves, seams, gaskets, etc.

The SPCC plan must contain a more detailed discussion about which employees receive training related to spill prevention, and what this training involves, pursuant to 40 C.F.R. § 112.7(f)(1).

The facility must be fully surrounded by a fence in good repair, which is free from large holes, pursuant to 40 C.F.R. § 112.7(g)(1). In particular, the fence behind the lube blending warehouse must be mended, and the fence near the red and white tanks must be extended so as to completely enclose the facility. Moreover, entrance gates must be locked and/or guarded when the facility is not in production or is unattended.

Secondary containment structures for bulk storage containers (tanks) must be adequate (secondary containment structures must contain the entire capacity of the largest single container and sufficient freeboard for precipitation), pursuant to 40 C.F.R. § 112.8(c)(2). In addition, diked areas must be sufficiently impervious to contain discharged oil.

There are a large number of containers (primarily portable) that do not have a secondary means of containment. This includes containers stored and/or mounted within enclosed trailers. All containers used to store oil which are 55 gallons or greater capacity must have some means of secondary containment or they must be emptied, have any associated piping disconnected and be marked as “permanently closed”.

Additionally, there is a uniquely engineered installation around the exterior of the red and white tanks which is purported to be a form of secondary containment. The SPCC plan needs to describe that this installation: (1) has adequate containment capacity and sufficient freeboard for precipitation; (2) is sufficiently impervious to contain discharged oil and; (3) how this installation will be inspected and maintained. The installation appears grossly inadequate in terms of containment capacity and imperviousness to contain spilled oil. There are holes in the “impervious” fabric, significant low spots where vehicles had driven over the wall, and topographic low spots. These deficiencies compromise the imperviousness and containment capacity of the installation.

The SPCC plan should discuss methods (such as hydrostatic, radiographic, ultrasonic,

acoustic or other nondestructive methods) and frequency of integrity testing of tanks and containers, as required by 40 C.F.R. § 112.8(c)(6). Once appropriate testing methods and frequency of testing have been identified, records of these inspections must be kept.

- The SPCC plan needs to address fail-safe engineering of tanks and containers, pursuant to 40 C.F.R. § 112.8(c)(8)(i-iv). Specifically, tanks must be engineered with a least one of the following devices: audible or visual high liquid level alarm; high-level pump cutoff devices set to stop flow at a predetermined tank content level; direct communications between tank gauges and pumping station; or fast response system for determining liquid levels, such as computers, telepulse, or direct vision gauges.

- Pursuant to 40 C.F.R. §§ 112.8(c)(11) and 112.1(b), all mobile or portable oil storage tanks should be positioned to prevent a discharge as described in 40 C.F.R. § 112.1(b), and all mobile or portable oil storage containers must have a secondary means of containment.

- Fill necks and pipe ends, for example, the grease totes in the main warehouse, or the piping at the blending warehouse that would fill new, interior tanks, must be capped or blank flanged and marked as to their origin, pursuant to 40 C.F.R. § 112.8(d)(2).

- The SPCC plan must be amended to remove all reference to the so-called "spill pond" as if it were a viable spill prevention installation. This is not a spill pond, it is actually a depression created when EPA excavated oil-soaked soils during the removal action taken in 1997. The soils are highly permeable and any spills that reach this depression will permeate into the soil.

APPENDIX B—DRAFT FEDERAL REGISTER NOTICE

4410-15

NOTICE

DEPARTMENT OF JUSTICE

NOTICE OF LODGING OF CONSENT DECREE
UNDER THE
CLEAN WATER ACT AND OIL POLLUTION ACT

Pursuant to 28 C.F.R. § 50.7, notice is hereby given that on [date of lodging], a proposed Consent Decree (“Decree”) in United States v. GC Quality Lubricants, Inc., Georgia-Carolina Oil Company, Bay Street Corporation, and John Paul Jones, Jr., Civil Action No. 5:01cv03233HL (M.D. Ga.), was lodged with the United States District Court for the Middle District of Georgia.

In this action the United States sought Clean Water Act (“CWA”) penalties, compliance with CWA oil pollution prevention regulations, and cost recovery under the Oil Pollution Act (“OPA”) for the United States’ response costs for the removal conducted at the GC Quality Lubricants, Inc. (“GC”) petroleum-based lubricants facility in Macon, Georgia (“Facility”). The Decree provides for GC to consent to an allowed general unsecured claim of \$3,000,000 for the cost recovery claim against GC, and to an allowed general unsecured claim of \$325,000 for the penalty claim against GC, both subject to approval by the United States Bankruptcy Court for the Middle District of Georgia in *In re GC Quality Lubricants, Inc.*, No. 01-54952 RFH (Bankr. M.D. Ga.). The Decree also provides for a penalty of \$75,000 against Settling Defendant Mr. Jones, and for Mr. Jones to consent to an allowed general unsecured claim of \$3,000,000 for the cost recovery claim against him, subject to approval by the United States Bankruptcy Court for the Middle District of Georgia in *In re John Paul Jones, Jr.*, No. 01-55087-RFH (Bankr. M.D.

Ga.). The Decree further provides for injunctive relief, specifically, compliance at the Facility with oil pollution prevention regulations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044-7611, and should refer to United States v. GC Quality Lubricants, Inc., et al., Civil Action No. 5:01cv03233HL (M.D. Ga.), D.J. Ref. 90-5-1-1-07033.

The Decree may be examined at the Office of the United States Attorney, Middle District of Georgia, 433 Cherry Street, Macon, Georgia 31201, and at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303-3104. During the public comment period, the Decree may also be examined on the following Department of Justice website, <http://www.usdoj.gov/enrd/open.html>. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$__ (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan
Assistant Chief
Environmental Enforcement Section
Environment and Natural Resources
Division